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CHARLES ELMORE CROPL
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IN THE

Supreme Court of the United States

OCTOBER TERM—1951

No. 585

MARTIN MAYRATH,

Petitioner,

vs.

THE HUTCHINSON MANUFACTURING COMPANY, a partnership composed of HAROLD E. GOETZ and ALBERT J. GOETZ,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

	PAGE
1. There is No Reason Why the Writ Should be Granted	2
2. The Decision Below was Correct in Holding the Patent in Suit Invalid	3
(a) All of the elements are found in the prior art performing the same functions they perform in the patent in suit	4
(b) In the patent in suit the old elements merely performed their old functions and produced no additional results	5
(c) The showing of commercial success is not particularly impressive	7
Conclusion	7

TABLE OF CASES

Great Atlantic & Pacific Tea Company v. *Supermarket Equipment Corporation*, 340 U. S. 147 (1950)	6, 7
Hendy v. *Golden State and Miners' Iron Works*, 127 U. S. 370, 375 (1888)	6

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This is an ordinary suit for alleged patent infringement, in which the Court of Appeals for the Tenth Circuit held Mayrath patent No. 2,483,290 for a "Grain Loader" to be invalid. The opinion of the Court of Appeals is at R. 287-292. It is reported at 192 F. 2d 110. The findings of fact, conclusions of law and opinion of the District Court which held the patent valid are at R. 36-54 and are reported at 92 F. Supp. 849.

The only question involved in the petition is whether the action of the Court of Appeals in holding the Mayrath patent to be invalid should be reviewed by this Court.

The holding of invalidity which is sought to be reviewed does not present any unsettled or disputed questions of

law. There is no conflict in decision with any other circuit. The case presents no question of general interest or public importance, and there is no reason why this Court should grant certiorari. Furthermore, the decision below that the patent is invalid is entirely correct.

1. There is No Reason Why the Writ Should be Granted.

In substance the petitioner urges that the writ should be granted in this case to forestall destruction of confidence in the patent laws and to forestall the establishment in lower courts of a standard of invention higher than that established or intended by this Court with attendant harmful results not only to the patent system but to the incentive offered to inventors of important inventions.

The difficulty is that the facts of the present case do not support the contention. Although the Court of Appeals did not find all of the elements of the combination claimed in the patent in suit in any one prior patent it did find every element in one prior patent or another. It also found that these elements in these prior patents and the arrangements thereof perform the same functions as like elements and arrangements perform in the patent in suit (R. 290-1). The Court of Appeals concluded that the patent in suit merely brought together old and well known elements from the prior art patents and involved merely mechanical skill not rising to the dignity of invention (R. 292). The District Court found every element of the combination in one or another prior patent, but did not find all of the elements in one patent (R. 44-9). The District Court made no finding, however, that these old elements perform any additional or different functions in the combination of the patent in suit than they performed out of it. The District Court resolved doubts in favor of the patent and commented "While the 'flash of creative genius' is not especially bright it seems that the patentee's conception is a 'substantial innovation' for which society is truly indebted to him" (R. 53).

Failure to review the decision of the Court of Appeals cannot lead to the dire consequences forecast by the petitioner. Lower courts should not be deterred from holding patents invalid when they cover combinations of old elements which perform only their old functions in the new combination and particularly where the flash of creative genius is not especially bright. Real inventors will not be discouraged by decisions such as that of the Court of Appeals.

2. The Decision Below was Correct in Holding the Patent in Suit Invalid.

The grain loader of the patent in suit is a screw conveyor. It is pivoted near its center to a sleeve which is movable up and down a post which is carried on wheels to give portability. The screw of the conveyor is driven by a belt which extends from the upper end of the screw over idler pulleys and down to a motor which is mounted on the sleeve which carries the conveyor.

When the sleeve is moved up the post it raises the upper end of the conveyor. Because the conveyor is pivoted at its center its lower end can swing down and reach the ground at all elevations. The motor shaft is lined up with the pivot of the conveyor so that the belt does not have to be adjusted every time the upper end of the conveyor is moved to a different height. However, the motor is mounted on a slide to make adjustments in belt tension to compensate for stretch or wear.

The motor and conveyor are mounted on opposite sides of the sleeve to counterbalance one another and keep the sleeve from canting and binding on the post.

(a) All of the elements are found in the prior art performing the same functions they perform in the patent in suit.

The prior Dolyniuk patent No. 2,355,711 shows the screw conveyor pivoted to a single table or support which also carries a motor which has its shaft aligned with the conveyor pivot so that for different positions of the conveyor it is not necessary to adjust the belt drive which extends from the motor to the upper end of the conveyor. These elements are the same as the elements of the patent in suit and perform the same functions. The conveyor conveys. The motor drives the conveyor. When the single support is moved from one elevation to another the conveyor swings around its pivot so that its lower end reaches the ground and it is not necessary to adjust the belt after each change of position. The motor stays level.

The prior Kaesler patent No. 2,395,410 shows the screw conveyor, a support in the form of a vertical post which slides in a sleeve for vertical adjustment of the conveyor. The motor is carried by the same support and is connected to the screw of the conveyor by a belt which passes over idler wheels exactly as in the patent in suit. These elements are the same as or equivalent to the same elements in the patent and perform the same function. The conveyor conveys. The motor drives the conveyor through the same belt drive that is used in the patent and when the support is raised the upper end of the conveyor is raised and the lower end still reaches the ground.

Neither of these prior art patents has wheels to make it portable. The prior Parker patent 1,321,123, however, shows a conveyor (which is a belt type rather than a screw type) which is mounted on a wheeled frame. It has a vertical guide member and a vertically slidable support for the conveyor and its power unit to raise the upper end of the conveyor. The conveyor is pivoted to this support just as the conveyor of the patent in suit is pivoted to its support. The motor stays level for all adjustments of elevation.

The wheels, the support and the guide members all perform the same functions as like elements in the patent in suit.

The prior Koch patent No. 2,370,048 shows a motor base along which the motor may be adjusted to loosen or tighten the belt. The base is identical with the base claimed in the patent in suit and the elements thereof are the same as and perform the same functions as they do in the patent in suit.

The prior Tautz patent No. 2,041,578 and Hedgpeth patent No. 2,176,572 both show a vertical post with a sleeve slidable on it. A motor is mounted on one side of the sleeve and a driven element on the other side to effect counterbalance. The motor is slidable horizontally to regulate belt tension.

(b) In the patent in suit the old elements merely performed their old functions and produced no additional results.

The Court of Appeals was correct in finding that each element performed only its old function.

Mounting the motor on the same support that the screw conveyor is pivoted to and lining up the motor shaft with the pivot made it possible to keep the motor level while raising or lowering the support to raise and lower the conveyor and made it unnecessary to adjust the belt after each change of position. Each element and arrangement, however, was merely the Dolyniuk element or arrangement. The elements performed the same function in Dolyniuk that they perform in the patent in suit.

The belt drive with idler wheels in the patent in suit performs the same function that it performed in Kaesler and no other function. It connects the motor and the screw and it operates the same way whether the support is a sleeve or a post and whether the motor is slidable horizontally.

The wheels of the patent in suit perform the same function that they perform in Parker.

The slidable motor mount is identical with the motor mount of Koch. It serves the same function of tightening or loosening the belt and that is all. The counterbalance feature of the patent in suit is the counterbalance feature of the Tautz and Hedgpeth patents and performs the same function.

Surely it cannot be contended that this case is not on all fours with the *Great Atlantic & Pacific Tea Company* v. *Supermarket Equipment Corporation,* 340 U. S. 147 (1950). The patentee has added two and two together and he still gets four. Furthermore he has overclaimed the invention by including old elements which perform no new function.*

It is urged in the petition that the Court of Appeals was wrong in finding that the various adjustments are performed before the device is put into operation and that the adjusting means perform no function during operation of the device to produce a new or better loading result (Petition pp. 8 & 9). However, it is not pointed out how it could be said that the belt tightening horizontally slidable motor mount could be used during operation.

It is suggested in the petition that the adjustment for different bins and door openings is one which is made while the machine is running. This is obviously not so. The adjustment would be made to the desired height of door or bin and there would be no further adjustment until the device was set up at another bin.

It is suggested that one might move the sleeve up and down while the device is in operation. However, this cannot be of any material significance because Mayrath testified that his company advised the use of a rope or baling wire

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* See also *Hendy* v. *Golden State and Miners' Iron Works,* 127 U. S. 370, 375 (1888).

to hold the conveyor in adjusted position and that one could not very well adjust the device while it was running under such circumstances (R. 97).

(c) The showing of commercial success is not particularly impressive.

It is urged throughout the petition that the commercial success is outstanding. The fact is, however, that the dollar volume is a small percentage of the dollar volume for all loaders and the fact is that these screw type loaders have not come close to displacing others (Exh. 19, R. 265, 267).

The commercial success here does not even compare with the commercial success which was disregarded by this Court in the *Great Atlantic & Pacific Tea Company* v. *Supermarket Equipment Corporation, supra.*

Conclusion

There is no reason for the grant of certiorari in this case. It does not present any unsettled questions of law or any questions of public importance.

Although this is a simple patent case the petitioner tries to make it appear that the decision of the Court of Appeals imperils our technological position in the world by withdrawing incentive from real inventors.

There is no likelihood of this occurring. In fact if patents such as the patent in suit are not invalidated the public will be deprived of the right to call upon the inherent skill of our mechanics and engineers to solve new problems as they arise by applying old and well recognized mechanical principles. It would be difficult to conceive of anything which could be more destructive to our economy and to progress than to permit alleged inventors like the patentee in this case to levy tribute on the agricultural industry or any other industry merely because they were the first to

select a group of well known elements and put them together in a single machine where they merely carry out their old well-recognized functions.

The petition for certiorari should be denied.

Respectfully submitted,

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March 3, 1952.

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